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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 453.

LA BELLE IRON WORKS, APPELLANT,

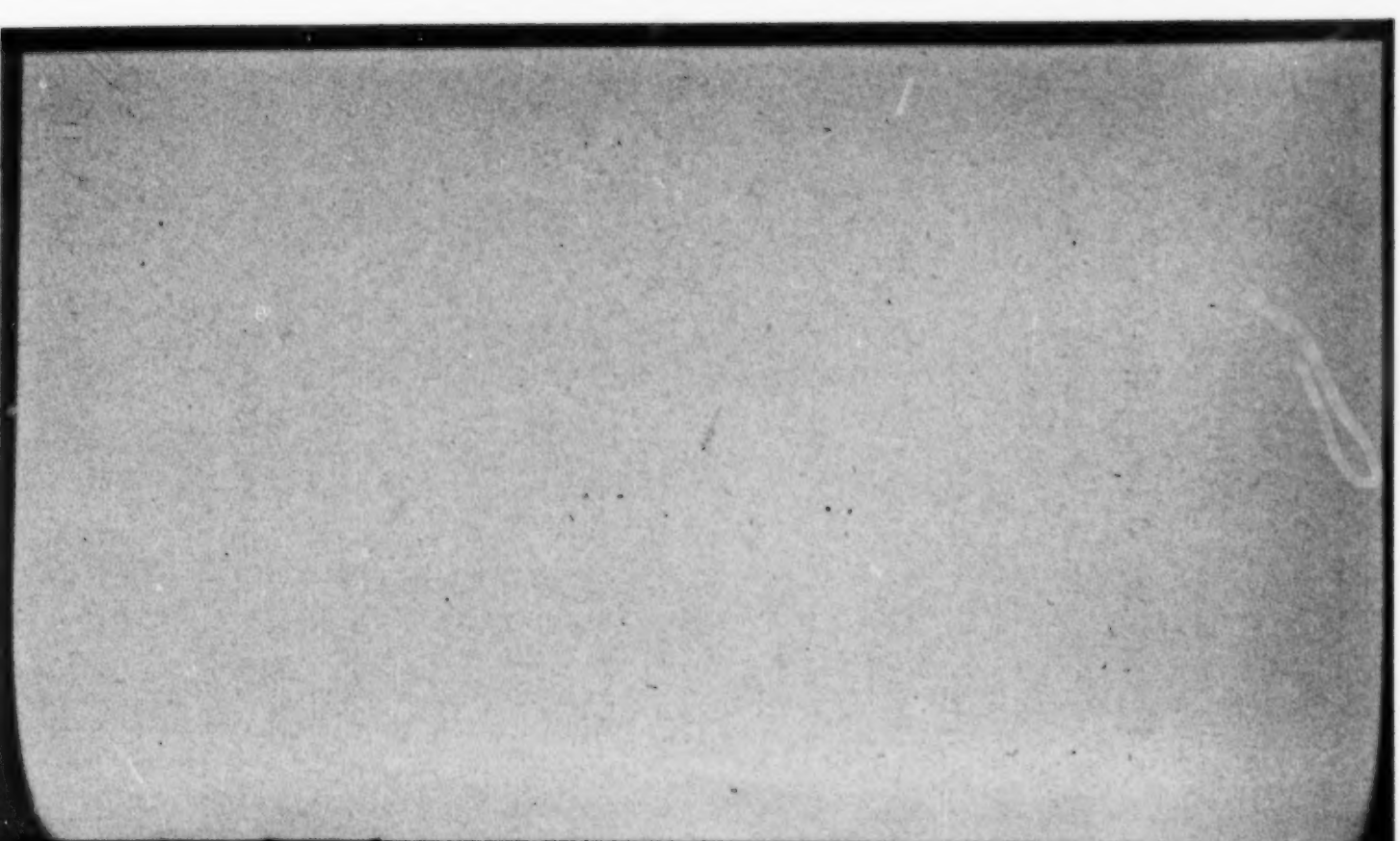
vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED JULY 21, 1920.

(27,810)



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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 30, 1920.

1 I. *Petition, Filed May* 15, 1920, *and Amendment to Petition, Filed June* 11, 1920, *and Exhibits.*

In the Court of Claims of the United States.

No. 34603.

LA BELLE IRON WORKS, a Corporation,

vs.

THE UNITED STATES.

Petition.

(Filed May 15, 1920.)

To the Honorable Judges of said Court:

I.

Petitioner, La Belle Iron Works, a corporation, organized under the laws of the State of West Virginia, to-wit, in the year 1875, having its principal office at Wheeling, West Virginia, files this petition to recover from the United States of America $1,081,184.61 with interest thereon at the legal rate from February 24, 1920, being the amount paid by the petitioner on that day to the Collector
2 of Internal Revenue of the United States, at Cleveland, Ohio, as an additional income and excess profits tax assessed and alleged by petitioner to have been wrongfully collected by the Commissioner of Internal Revenue of the United States from the Company, for the year 1917, and paid by the said petitioner under duress and written protest.

II.

By an act of Congress passed on October 3, 1917, entitled "An Act to Provide Revenue to defray War Expenses and other purposes" amending the income tax law then in force, it is among other things by Section 10 (*a*) provided as follows:

Sec. 10 (*a*). That there shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding calendar year from all sources by every corporation, joint-stock company or association, or insurance company, organized in the United States, no matter how created or organized but not including partnerships, a tax of two per centum upon such income; and a like tax shall be levied, assessed, and collected, and paid annually upon the total net income received in the preceding calendar year from all sources within the United States by every corporation, joint-stock company or association, or insurance company organized, authorized,

or existing under the laws of any foreign country, including interest on bonds, notes, or other interest-bearing obligation of residents, corporate or otherwise, and including the income derived from dividends on capital stock or from net earnings of resident corporations, joint-stock companies or associations, or insurance companies whose net income is taxable under this title.

3 And by Section 4 of said Act, it is provided as follows:

Sec. 4. That in addition to the tax imposed by subdivision (*a*) of section ten of such Act of September eighth, nineteen hundred and sixteen, as amended by this Act, there shall be levied, assessed, collected, and paid a like tax of four per centum upon the income received in the calendar year nineteen hundred and seventeen and every calendar year thereafter, by every corporation, joint-stock company or association, or insurance company, subject to the tax imposed by that subdivision of that section, except that if it has fixed its own fiscal year, the tax imposed by this section for the fiscal year ending during the calendar year nineteen hundred and seventeen shall be levied, assessed, collected, and paid only on that proportion of its income for such fiscal year which the period between January first, nineteen hundred and seventeen and the end of such fiscal year bears to the whole of such fiscal year.

The tax imposed by this section shall be computed, levied, assessed, collected, and paid upon the same incomes and in the same manner as the tax imposed by subdivision (*a*) of section ten of such Act of September eighth, nineteen hundred and sixteen, as amended by this Act, except that for the purpose of the tax imposed by this section the income embraced in a return of a corporation, joint-stock company or association, or insurance company, shall be credited with the amount received as dividends upon the stock or from the net earnings of any other corporation, joint-stock company or association, or insurance company, which is taxable upon its net income as provided in this title.

And by Section 201, of Title II, of said Act, it is provided as follows:

4 Sec. 201. That in addition to the taxes under existing law and under this Act there shall be levied, assessed, and collected and paid for each taxable year upon the income of every corporation, partnership, or individual, a tax (hereinafter in this Title referred to as the tax) equal to the following percentages of the net income:

Twenty per centum of the amount of the net income in excess of the deduction (determined as hereinafter provided) and not in excess of fifteen per centum of the invested capital for the taxable year; Twenty-five per centum of the amount of the net income in excess of fifteen per centum and not in excess of twenty per centum of such capital; Thirty-five per centum of the amount of net income in excess of twenty per centum and not in excess of twenty-five per centum of such capital; Forty-five per centum of the amount of the net income in excess of twenty-five per centum and not in excess of thirty-three per centum of such capital; and Sixty per

centum of the amount of the net income in excess of thirty-three per centum of such capital.

III.

The deduction mentioned in the said Section 201 is provided for by Section 203, of Title II, of the said Act, the portion of which material to this controversy is as follows:

Sec. 203. That for the purposes of this title the deduction shall be as follows, except as otherwise in this title provided—(*a*) in the case of a domestic corporation, the sum of (1) an amount equal to the same percentage of the invested capital for the taxable year which the average amount of the annual net income of the *the* trade or business during the pre-war period was of the in-
5 vested capital for the pre-war period (but not less than seven or more than nine per centum of the invested capital for the taxable year), and (2) $3,000.

IV.

By said Section 203, above set forth, it is provided that before any excess profits tax is assessed against any corporation, the said corporation shall be entitled to a deduction which shall include a certain percentage upon the invested capital of such corporation. The term invested capital for the purposes of said Act is defined in Section 207, of Title II, thereof, as follows:

Sec. 207. That as used in this title the term "invested capital" for any year means the average invested capital for the year, as defined and limited in this title, averaged monthly.

As used in this title "invested capital" does not include stocks, bonds (other than obligations of the United States), or other assets, the income from which is not subject to the tax imposed by this title, nor money or other property borrowed, and means, subject to the above limitations:

(*a*) In the case of a corporation or partnership: (1) actual cash paid in, (2) the actual cash value of tangible property paid in other than cash, for stock or shares in such corporation or partnership, at the time of such payment (but in case such tangible property was paid in prior to January first, nineteen hundred and fourteen, the actual cash value of such property as of January first, nineteen hundred and fourteen, but in no case to exceed the par value of the original stock or shares specifically issued therefore), and (3) paid in or earned surplus and undivided profits used or employed
6 in the business, exclusive of undivided profits earned during the taxable year; provided, That (*a*) the actual cash value of patents and copyrights paid in for stock or shares in such corporation or partnership, at the time of such payment, shall be included as invested capital, but not to exceed the par value of such stock or shares at the time of such payment, and (*b*) the good-will, trade-marks, trade brands, the franchise of a corporation or partner-

ship, or other intangible property, shall be included as invested capital if the corporation or partnership made payment bona fide therefor specifically as such in cash or tangible property, the value of such good-will, trademark, trade brand, franchise or intangible property, not to exceed the actual cash or actual cash value of the tangible property paid therefor at the time of such payment; but good-will, trade-marks, trade brands, franchise of a corporation or partnership, or other intangible property, bona fide purchased, prior to March third, nineteen hundred and seventeen, for and with interests or shares in a partnership or for and with shares in the capital stock of a corporation (issued prior to March third, nineteen hundred and seventeen), in an amount not to exceed, on March third, nineteen hundred and seventeen, twenty per centum of the total interests or shares in the partnership or of the total shares of the capital stock of the corporation, shall be included in invested capital at a value not to exceed the actual cash value at the time of such purchase, and in case of issue of stock therefor not to exceed the par value of such stock.

V.

The petitioner alleges that pursuant to the provisions of the law hereinbefore set out it made return of its annual net
7 income for the year 1917 and thereupon an income and excess profits tax was assessed against the petitioner in the sum of $5,139,109.84 which tax the petitioner paid.

VI.

Under the provisions of the law, hereinbefore set forth, before computing an excess profits tax to be assessed against the company, the company was entitled to certain deductions from its income among others to wit: a deduction of 7% upon its invested capital, as defined in said Act. In said return filed by the Company it stated its invested capital to be $26,322,904.14, and before computing its excess profits tax deducted 7% of said sum, said deduction on account thereof being $1,842,603.50. The said invested capital as stated by the petitioner in its said return included the sum of $10,105,400 as representing that part of the capital of the company invested in its ore lands. The said ore lands were acquired by the company prior to the year 1904, the company paying therefor the sum of $190,000. After the said ore lands were so acquired, extensive explorations and developmental work were carried on and it was proved that the said lands contained large bodies of ore; and between the date of the said purchase, as aforesaid, and the year 1912, the said ore lands greatly increased in value. In the year 1912 the actual cash value of the said ore lands, which as before stated were acquired prior to the year 1904 for $190,000, was not less than the said sum of $10,105,400, and at all times during the years 1912 to 1917 inclusive, the actual cash value of said ore lands was not less than said
8 sum of $10,105,400. In said year 1912, the company increased the valuation of the said lands on its books by adding

thereto the sum of $10,000,000 and carried said sum last mentioned to surplus, and thereupon in the said year 1912 declared a stock dividend in the sum of $9,915,400, representing the said increase in value of the said ore lands. And at all times thereafter said sum last mentioned was treated by the petitioner as a part of its invested capital and as before stated was included in the invested capital of the petitioner in its excess profits tax return for the year, 1917.

(Amendment filed by leave of Court, June 11, 1920.)

The said declaration of a stock dividend was accomplished in the following manner: Prior to said stock dividend, the petitioner's capital stock consisted of stock issued, all of one class, having a par value of $9,915,400. Thereupon the charter of the petitioner was amended in accordance with the laws of the State of West Virginia, so that the petitioner's stock issue was fixed at $10,000,000 par value of common stock, and $10,000,000 par value of preferred stock. Thereupon all the said outstanding stock, to wit, $9,915,400 par value was surrendered by the stockholders to the Company and cancelled. In exchange therefor one share of the new common stock and one share of the new preferred stock was issued in place and stead of each share of the original stock outstanding.

VII.

Thereafter the Commissioner of Internal Revenue caused to be made a re-assessment of the said tax for the said year 1917 and assessed an additional tax of $1,081,184.61 against the petitioner, and payment thereof was demanded of the petitioner on or before February 24, 1920.

In assessing the said additional tax the Commissioner struck out of the return of the petitioner the said sum of $9,915,400 (being the increase in the value of said ore lands), thus reducing the invested capital of the petitioner from $26,322,907.14 (which is the amount stated in the return filed by the petitioner with the Commissioner) to $16,407,507.14. The said additional tax of $1,081,184.61 assessed against the petitioner and paid under duress and protest as aforesaid was due entirely to the reduction in the invested capital of the petitioner from the above sum of $26,322,907.14 to said sum of $16,407,507.14.

9

VIII.

On February 24, 1920, said petitioner paid said sum of $1,081,184.61, additional tax for the year 1917, to Harry H. Weiss, Collector of Internal Revenue, Cleveland, Ohio, under threat of execution and levy on its property for failure to do so. At the time of such payment said petitioner filed written protest with said Collector, a copy of which is attached hereto as Exhibit "A" and made a part hereof. The whole of the said sum last mentioned was duly turned over to the United States by the said Collector in the usual course

of his business as such collector. A copy of the receipt for such tax is hereto attached as Exhibit "B", and made a part hereof.

IX.

Thereafter on the 17th day of March, 1920, the petitioner filed in the office of the Commissioner of Internal Revenue a claim for refund, claiming said amount now sued for, being said sum of $1,081,184.61. A copy of said claim for refund is hereto attached as Exhibit "C", and made a part hereof. Afterwards, on the 8th day of April, 1920, said claim for refund filed with the said Commissioner was considered and rejected by the said Commissioner of Internal Revenue, and the whole of the said sum of $1,081,184.61 is, on the date of filing this petition, now retained and held by the said United States.

X.

The sole question of law in this case is whether the petitioner, under the provisions of the law, in making its excess profits
10 tax return for the year 1917 was entitled to include in its invested capital a sum not exceeding the actual cash value at all times after January 1, 1912, of its ore lands, or whether said invested capital of the petitioner under the law is limited to the actual cost of the said ore lands.

XI.

Petitioner further represents that the claimant has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted or given encouragement to rebellion against said Government; that it is the sole and absolute owner of the claim herewith presented; that it has made no transfer or assignment of said claim, or of any part thereof, and that petitioner is justly entitled to the amount claimed herein from the United States, after allowing all just credits and set-offs.

Petitioner therefore prays judgment in its favor and against the United States of America for the said sum of $1,081,184.61 and interest.

LA BELLE IRON WORKS,
By D. A. BURT,
Vice-Pres. and Treas.
COVINGTON & BURLING,
Attorneys for the Claimant.

McCAMIC & CLARKE,
Wheeling, West Virginia,
Of Counsel.

[STATE OF OHIO, COUNTY OF JEFFERSON, ss:]

David A. Burt being duly sworn on oath says that he is the Vice-President and Treasurer of said La Belle Iron Works, the
11 Claimant above named, and its agent duly authorized to present this claim and make this verification; that he has read the foregoing claim signed by him on behalf of said Claimant, and that the same is true in substance and in fact.

DAVID A. BURT.

Sworn and subscribed to before me this fourteenth day of May, nineteen hundred and twenty.

GERTRUDE M. BOWDLE,
Notary Public.

12 EXHIBIT A.

Harry H. Weiss, Collector of Internal Revenue, February 24, 1920. 18th Dist. Ohio. Cleveland, Ohio.

Protest of La Belle Iron Works Against Exaction of Additional Tax.

Steubenville, Ohio, February 24, 1920.

Harry H. Weiss, Esquire,
Collector Internal Revenue,
Cleveland, Ohio.

We hereby protest against the additional tax of $1,081,184.61 assessed against and demanded of this Company, account this Company's income and consolidated excess profits tax returns for the calendar year 1917, as evidenced by notice 1917—23756677 O. A. 10.16.19, January List, page 12, line 7, on the ground that it is erroneous and illegal and payment is hereby made solely to prevent the imposition of penalties threatened and the attachment threatened of our property.

The objection is that the Commissioner of Internal Revenue, contrary to law and to equity, has refused to recognize as part of, and to include in, the Invested Capital of this Company, as reported on said returns, the sum of $9,915,400.00, and, contrary to law and to equity, has arbitrarily reduced the said Invested Capital from $26,322,907.14, as so reported, to the sum of $16,407,507.14,
13 when in truth and in fact the Invested Capital of this Company for said year was said sum of $26,322,907.14, computed in accordance with the provisions of the Act of Congress of September 8, 1916, as amended by the Act of October 3, 1917, and particularly Section 207 of Title II of the said Act of October 3, 1917, and with law.

The objection further is that calculated on the basis set forth in said returns, which is the true basis for the total tax for the year 1917, as heretofore assessed against and paid for this Company,

amounted to the sum of $5,139,109.84, but the arbitrary refusal of the Commissioner of Internal Revenue to recognize the said sum of $9,915,400.00 as part of the values of this Company's properties, in calculating the amount of this Company's Invested Capital for the calendar year 1917, and for the purposes of calculating said Invested Capital, said Commissioner's reduction of the book values of this Company's properties by said sum of $9,915,400.00 has illegally and erroneously reduced the deduction to which this Company is entitled under the Acts of Congress aforesaid, and the tax has been thereby illegally and erroneously increased for said year in the sum of $1,081,184.61 which is the amount of the additional tax now assessed and demanded as aforesaid, and against which we protest.

The objection, further, is that the Regulation of the Treasury Department to the effect that appreciation in property values taken up in accounts of the taxpayers must be deducted in ascertaining the taxpayer's Invested Capital, irrespective of the real and actual value (at the time of such taking up or at the beginning of the
14 taxable year) of the said property, is contrary to the provisions and to the real meaning and intent of said Act of Congress approved October 3, 1917, and is wholly unwarranted thereby, and such Regulation is an erroneous and unconstitutional interpretation of said Act and is violative of the Fifth and Sixteenth Amendments to the Constitution of the United States in that as applied to protestant's case for the said year of 1917, it deprives protestant of its property arbitrarily, unjustly, and without due process of law.

The further objection is that if said Regulation of the Treasury Department be not contrary to said Act approved October 3, 1917, but is required by the provisions of said Act, then said Act in so far as such appreciation is required to be so deducted is unconstitutional, is in violation of the Fifth and Sixteenth Amendments to the Constitution of the United States, and in this present case deprives protestant of its property illegally and without due process of law.

We submit to the assessment and demand of such additional tax and pay the same under compulsion, insisting that such assessment and demand are illegal and wholly erroneous, and that the said sum of $9,915,400.00 is a part of the values of the Company's properties and must be considered as such in the calculation of the Invested Capital of this Company for the said year 1917.

We give notice that we intend to seek redress by suit at law and otherwise as we may be advised for the wrong done to us in respect to the exaction of this illegal, erroneous, and wholly excessive additional tax assessed and demanded of us as aforesaid, and we
15 rely upon the objections we have made, and upon such other objections founded in law and in fact as belong to the case, and we now offer to specify them to the collector more particularly if requested so to do.

The sum of money now illegally and erroneously exacted from us is the sum of $1,081,184.61, that being the sum whereby the tax calculated on the said income and consolidated excess profits returns for the calendar year 1917, as aforesaid, but on an Invested Capital

for that year of $16,407,507.14, exceeds the tax calculated on said returns and on the Invested Capital calculations, as therein made, of $26,322,907.14.

LA BELLE IRON WORKS,
By D. A. BURT,
Treasurer.

PART OF EXHIBIT "C."

Exhibit "A" Attached to and a Part of the Claim for Refund of La Belle Iron Works, a Corporation, and of the Affidavit of D. A. Burt Filed Herewith in Support Thereof.

The consolidated 1917 income and excess profits tax returns of said La Belle Iron Works reported an Invested Capital for that year of $26,322,907.14. In the year 1912 the Company's assets included ore lands on the Mesabi range which had been acquired prior to 1904. In 1912, these ore properties were carried on the books at $190,000. They were worth in that year, without any question, more than $10,000,000. Similar properties were sold in the market at that rate. And the Company had cash offers for the ore properties at that rate. In the year 1912, the Company increased the book value of these ore properties by the sum of $9,915,400.00
16 and declared a stock dividend of that amount in that year. And the invested capital of said sum of $26,322,907.14 given in the Company's return for said year 1917 included said item of $9,915,400.

The fair market value of the said properties, the book values of which were so appreciated in 1912, were, on January 1, 1909, and at the time of their appreciation on the books of the Company, equal to or greater than their original book value plus the said sum of $9,915,400.

The total net income of said La Belle Iron Works for said year 1917 was $12,856,759.80 and the total income and excess profits tax thereon, based on an Invested Capital as aforesaid of $26,322,907.14 amounted to $5,139,109.84, which sum has been duly paid to the Collector.

The said sum of $1,081,184.61 represents an additional assessment of income and profit taxes for said year of 1917, based upon the income aforesaid and an Invested Capital for the year of $16,407,507.14, which latter is said sum of $26,322,907.14 reduced by the said sum of $9,915,400.00, representing the said appreciated value aforementioned, and which said sum of $9,915,400.00 the Commissioner of Internal Revenue refused to recognize as part of or to include in the Invested Capital of the Claimant for the said year.

Affiant says that the property so appreciated on the books as aforesaid was on January 1, 1909, and thereafter from that date until the present time, worth as much as, or more than it cost plus the said sum of $9,915,400.00 and that at and after said date the actual and the market value thereof equalled or exceeded its cost plus
17 the said sum; that the true Invested Capital of the Company, so affiant verily believes, for the year 1917 was in excess of the

said sum of $26,322,907.14 aforementioned, in the calculation and making up of which Claimant was and is entitled to value its said properties, so appreciated in fair market value and book value as aforesaid, at their said appreciated book value (that being equal to or less than their actual value) in arriving at the true earned surplus and undivided profits of the Company as provided and defined in said Act of Congress of September 8, 1916, as amended by the Act of Congress of October 3, 1917, and particularly section 207 of Title II of the said Act of Congress approved October 3, 1917, and according to law.

That the said Act of Congress of September 8, 1916, as amended by the Act of October 3, 1917, and particularly Section 207 of Title II of said latter Act does not exclude but on the contrary allows the inclusion of, in arriving at the true earned surplus and undivided profits of a taxpayer, the appreciated values upon the books of the taxpayer's properties if in truth and in fact such appreciated values do not exceed the actual fair market values of the taxpayer's properties.

The Regulation of the Treasury Department (followed in the case of claimant for said year of 1917 in regard to its income and profits taxes) that a deduction must be made of such appreciated values in arriving at claimant's Invested Capital is contrary to the provisions and true intent of said Act approved October 3, 1917, and if such Regulation be in fact warranted and required by said Act approved October 3, 1917, then as to such part thereof so interpreted
18 & 19 by such Regulation said Act is unconstitutional, and in violation of the Constitution of the United States and particularly of the Fifth and Sixteenth Amendments thereto.

Wherefore, the said sum of $9,915,100.00 should be considered and used in valuing the properties of claimants in arriving at the amount of the Invested Capital of Claimant for the said year 1917, and so using the same said Invested Capital amounts to said sum as reported on said returns, of $26,322,907.14, and the income and profits taxes properly due for said year to said sum of $5,139,169.84 which has been paid, and any further assessment based upon the elimination of said actual though appreciated values is erroneous, wholly excessive, unwarranted, and illegal, and Claimant is entitled to a refund of said sum of $1,081,184.61, additional tax assessed against claimant as aforesaid and paid on the 24th day of February, 1920, to Harry H. Weiss, Collector of Internal Revenue, Cleveland, Ohio, as aforesaid.

20 EXHIBIT B.

Form 1108.
United States Internal Revenue.

Memorandum for Taxpayer—Income and Excess Profits Tax for 1917.

Instructions to Taxpayer.

Detach this part of the form and retain it as a record of the payment of your tax unless you want a receipt other than the endorsement on your check. If a receipt is desired forward this part of the form and the notice with your remittance. Otherwise no receipt will be issued.

1917—23750977 O. A. 10/16/19.

Taxpayer's Record

Check No. .....
Bank.....
Date.....

Money Order No. .....
Office of issue.....
Date.....

La Belle Iron Works,
Steubenville, O.

Paid Under Protest.

Collector of Internal Revenue
Paid
Feb. 24, 1920
Cashier G
Cleveland, O.

Additional tax—$1,081,184.61

Date due—Feb. 24, 1920.

January List
Page 12 Line 7

(Copy)

EXHIBIT C.

Claim for Refund.

Taxes Erroneously or Illegally Collected.

Also Amounts Paid for Stamps Used in Error or Excess.

STATE OF OHIO,,
County of Jefferson, ss:

Date of filing to be plainly stamped here

IMPORTANT.—This claim should be forwarded to the Collector of Internal Revenue to whom the Tax was paid and must be accompanied by Collector's Receipt therefor.

La Belle Iron Works (name of claimant),
Steubenville, Ohio (address),

This deponent being duly sworn according to law deposes and says that this claim is made on behalf of the claimant named above, and that the facts stated below with reference to the claim are true and complete:

1. Business engaged in by claimant. Manufacture of iron and steel.
2. Character of assessment or tax. Excess profits tax.
3. Amount of assessment or stamps, $1,081,184.61.
4. Amount now asked to be refunded (or such greater amount as is legally refundable), $1,081,184.61.
5. Date of payment of assessment or purchase of stamps. February 24, 1920.

Deponent verily believes that the amount stated in Item 4 should be refunded and claimant now asks and demands refund of said amount for the following reasons:

See Rider Hereto Attached, as Exhibit "A."

And this deponent further alleges that the said claimant is not indebted to the United States in any amount whatever, and that no claim has here-
21 tofore been presented, except as stated herein, for the refunding of the whole or any part of the amount stated in Item 3.

Signed:

D. A. BURT,
Treasurer of La Belle Iron Works.

Sworn to and subscribed before me this 24th day of February, 1920.

J. L. FISHER,
Notary Public.

Seal Attached.

My commission expires Apr. 20, 1920.

(This affidavit may be sworn to before a Deputy Collector of Internal Revenue without charge.)

Certificates.

I certify that an examination of the records of the Bureau of Internal Revenue shows the following facts as to the assessment and payment of the tax:
Name of taxpayer, La Belle Iron Works, Steubenville, Ohio. Character of assessment and period covered, Income Tax. List, Jan. Year, 1920. Month, Jan. Page, 12. Line, 7. Amount, $1,081,184.61. Date paid, 2-24-20. District in which paid, 18th Ohio.

(S.) HARRY H. WEISS,
Collector of Internal Revenue.

I certify that the records of my office show the following facts as to the purchase of stamps:
To whom sold or issued.
Kind.
Number.
Denomination.
Date of sale or issue.
Amount.
If special tax stamp, state: Serial number. Period commencing—

.....

Collector.....District.....

FORM 46.

Schedule Number..... District.....

Allowed or Rejected Number.. .....

Claimant..... (Nature of tax.)

Address.....

Examined and submitted for action..... 19....

Claim examined by—

.....

Claim approved by—

.....
Chief of Division.

Committee on Claims.

Amount claimed—$..... .....

Amount allowed—$..... .....

Amount rejected—$..... .....

22 II. *Demurrer.*

Filed May 28, 1920.

Defendant demurs to plaintiff's petition on the ground that it sets forth no cause of action.

FRANK DAVIS, JR.,
Assistant Attorney General.

T. K. SCHMUCK,
Special Assistant to the Attorney General.

III. *Argument and Submission of Demurrer.*

On June 14, 1920, the demurrer of the defendant in this case was argued and submitted by Messrs. T. K. Schmuck and A. L. Boulware, for the defendant, and by Messrs. Charles McCamic and E. B. Burling, for the claimant.

23 IV. *Order of the Court and Memorandum.*

Entered June 28, 1920.

Order.

This cause coming on to be heard was submitted to the court—three judges sitting—upon the defendant's demurrer to the plaintiff's petitioner, as amended, and was argued by counsel. On consideration whereof, the court is of opinion that the demurrer is well taken. It is therefore adjudged and ordered that the defendant's demurrer to the petition as amended in this cause be, and the same is hereby, sustained and the petition as amended is dismissed.

Memorandum.

The court's conclusions are:

(1) That the act in question (40 Stat., 306) undertakes to define "invested capital" and the averments of the petition can not be said to bring the plaintiff's case within the definition of section 207.

(2) That the increase in value of plaintiff's ore lands, which was first declared to be surplus, and afterwards treated as the basis of a stock dividend, did not thereby become earned surplus or individual profits or invested capital within the meaning of the act of 1917. The stock dividend added nothing to, and took nothing from, the corporation's invested capital.

(3) That the inequalities, which can arise in the application of the statute to particular cases, can not be corrected by judicial construction, where the enactment is otherwise valid.

(4) That where the act is ambiguous or uncertain, the construction of it by the administrative officers charged with its execution is entitled to great respect.

V. *Judgment of the Court.*

At a Court of Claims held in the City of Washington on the Twenty-eighth day of June, A. D., 1920, judgment was ordered to be entered as follows:

This case was submitted upon the defendant's demurrer to the claimant's petition, as amended, on consideration whereof the court is of the opinion that the demurrer is well taken.

It is therefore ordered, adjudged and decreed that the defendant's said demurrer to the plaintiff's petition, as amended, be sustained, and that the petition be and the same is hereby dismissed.

BY THE COURT.

24 VI. *Claimant's Application for and Allowance of an Appeal.*

From the judgment rendered in the above entitled cause on the 28th day of June, 1920, in favor of the United States, claimant by its attorneys, Covington & Burling, on the 12th day of July, 1920, makes application for, and gives notice of, an appeal to the Supreme Court of the United States.

COVINGTON & BURLING,
Attorneys for Claimant.

Filed July 12, 1920.
Ordered: That the above appeal be allowed as prayed for.
EDWARD K. CAMPBELL,
Chief Justice.
July 15, 1920.

Court of Claims.

No. 34603.

LA BELLE IRON WORKS, a Corporation,

vs.

THE UNITED STATES.

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of the demurrer; of the order of the court and memorandum, filed June 28, 1920; of the judgment of the court; of the application of the claimant for and the allowance of an appeal to the Supreme Court of the United States.

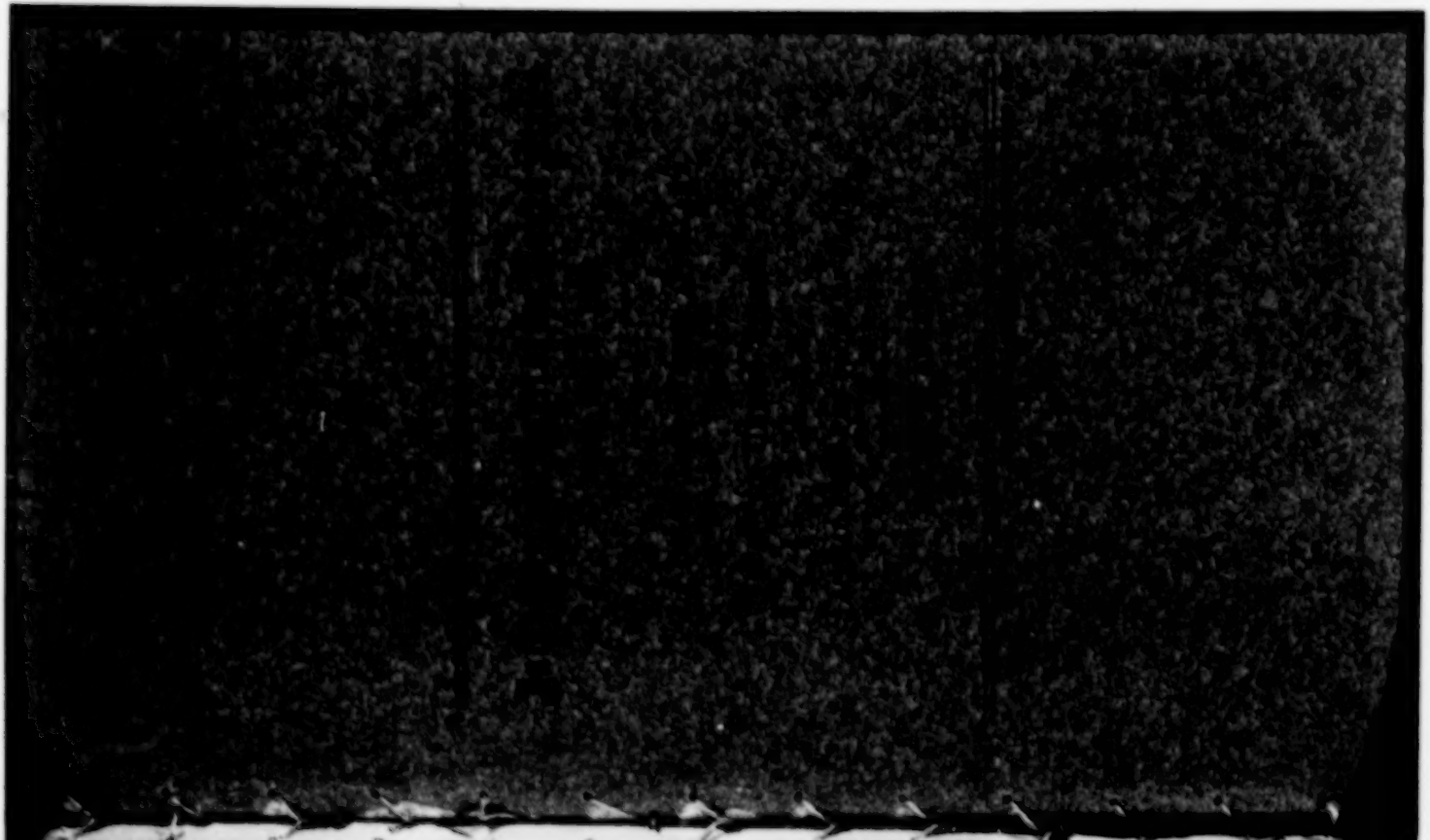
In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Washington City this Seventeenth day of July, A. D. 1920.

[Seal of Court of Claims.]

F. C. KLEINSCHMIDT,
Assistant Clerk Court of Claims.

Endorsed on cover: File No. 27810. Court of Claims. Term No. 453. La Belle Iron Works, appellant, vs. The United States. Filed July 21st, 1920. File No. 27810.

(453)



In the Supreme Court of the United States.

OCTOBER TERM, 1920.

LA BELLE IRON WORKS, APPELLANT,
v.
THE UNITED STATES.
No. 453.

APPEAL FROM THE COURT OF CLAIMS.

MOTION TO ADVANCE.

Comes now the Solicitor General and moves the court to advance this case and set it for hearing on January 3, 1921.

The suit is one to recover $1,081,184.61, with interest, being the amount paid, under protest, as an additional income and excess profits tax assessed for the year 1917 and alleged by the appellant to have been wrongfully collected by the Commissioner of Internal Revenue. The question arises under section 203 of the revenue act of October 3 1917 (40 Stat., c. 63, pp. 300, 304), which provides for a deduction from the gross income in the case of a domestic corporation of "an amount equal to the same percentage of the

invested capital for the taxable year which the average amount of the annual net income of the trade or business during the prewar period was of the invested capital for the prewar period (but not less than seven or more than nine per centum of the invested capital for the taxable year.)" The controversy is over what is to be treated as invested capital within the meaning of this section. The appellant is the owner of certain ore lands which it acquired prior to 1904 for $190,000. It alleges that by the year 1912 the value of these lands had increased until it was not less than $10,105,400, and that during that year it obtained authority to increase its capital stock and issued against this increase of value an additional $9,915,400 of stock. Its claim is that, for the purposes of the Act of Congress above mentioned, it is entitled to have its invested capital treated as the actual value of its assets on March 1, 1913, as evidenced by its outstanding stock, including the additional amount above mentioned. The Commissioner of Internal Revenue, however, declined to treat said additional amount of $9,915,400 as a part of the invested capital and the taxes paid were assessed and collected on this basis.

This question has been raised by a great many corporations throughout the country subject to taxation under this Act. A large number of claims for refunds based upon it are now pend-

ing or threatened. While the decision of the court below was in favor of the Government, it will readily be seen that it is a matter of very great importance to the Government as well as to the large number of taxpayers interested that the question be promptly determined. This is necessary in order that the collection of taxes may proceed without embarrassment and also to prevent the great accumulation of claims which will occur until the question is finally determined by this court.

Opposing counsel concur in this motion.

Respectfully submitted.

WILLIAM L. FRIERSON,
Solicitor General.

NOVEMBER, 1920.

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